

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7120

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend of
HECTOR TORRES, a minor, and on behalf
of all other persons similarly situ-
ated,

Plaintiffs -
Appellants,

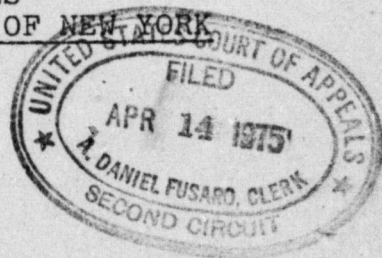
-vs-

JAMES REED, as Commissioner of the
Department of Social Services of the
County of Monroe, and on behalf of all
other commissioners of local depart-
ments of social services in the State
of New York, and ABE LAVINE, as Com-
missioner of the Department of Social
Services of the State of New York,

Defendants -
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX



RENE H. REIXACH, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiffs-
Appellants

B
P/S
APPENDIX

PAGINATION AS IN ORIGINAL COPY

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Civ-74-510 Jose Cordova et al v. James Reed & 1

DATE	PROCEEDINGS	Date Order Judgment No.
1974		
Oct. 30	Filed complaint. (Filed & retained in Rochester)	
30	Filed order permitting service by other than U.S. Marshal, etc.-Burke, DJ F-157	
30	JS 5 made	
Nov. 6	Filed Pltfs. affidavit, application for 3-Judge Court, & notice of motion for preliminary injunction, etc.-ret. 11-11-74	R
6	" Pltfs. affidavits of service.	R
11	" Deft., Reed, affidavit in opposition.	R
11	" Deft., Lavine, notice of motion & motion to dismiss ret. 11-11-74	R
11	" Pltfs. affidavit.	R
11	Motion by pltf. for preliminary injunction, 3-judge court, etc. to be finally submitted 2 wks from today.	
29	Filed Pltfs'. Affidavit and Request to Enter Default	R
Dec. 5	Filed answers on behalf of James Reed to complaint.	R
9	" Pltfs' affidavit & notice of motion for default judgment & renewal of motion for temporary restraining order ret. at Roch. 12-9-74	
9	Filed Deft., Reed, affidavit in opposition to motion for default	
9	Motion by Pltf. for default judgment, etc. Submitted now.	
1975		
Mar. -6	Filed decision & order denying pltfs. motion for default judgment against deft. Reed & dismissing the action-Burke, DJ Notice & copies to Rene H. Reixach, Frank P. Celona & Paul Harrison	F-162
6	JS 6 made	
6	Filed judgment dismissing the action-Clerk Notice & copies to Rene H. Reixach, Frank P. Celona & Paul Harrison	F-162
7	Filed Pltfs. motion for an injunction or temporary restraining order against enforcement or application of section 382 of the N.Y. Social Services Law to pltfs. pending appeal of order dated 3-5-75. Denied motion-Burke	R
6	Filed Pltfs'. Notice of Appeal (copy mailed to Messrs. Celona and Harrison and to Clerk, CCA with copy of docket entries; CCA's Forms C & D mailed to Mr. Reixach)	

CLOSED *April*

2

United States District Court

FOR THE
WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE No. 74-510

JOSE CORDOVA AND AMELIA CORDOVA,
individually and as next friend of
HECTOR TORRES, a minor, and on behalf
of all other persons similarly situated,

Plaintiff s

v.

JAMES REED, as Commissioner of the
Department of Social Services of the
County of Monroe, and on behalf of all
other commissioners of local departments
of social services in the State of New
York, and ABE LAVINE, as Commissioner of
the Department of Social Services of the
State of New York,
Defendant s.

SUMMONS

To the above named Defendant s :

You are hereby summoned and required to serve upon

Rene H. Reixach, Esq.

plaintiff's attorney , whose address is Greater Up-State Law Project
Monroe County Legal Assistance Corp.
80 West Main Street
Rochester, New York 14614

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

s/ John K. Adams

Clerk of Court.

Deputy Clerk.

Date: October 30, 1974

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____, 19____, I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel ----- \$ -----

Service -----

Subscribed and sworn to before me, a

day of _____, 19____.

[SEAL]

By _____

Deputy United States Marshal

this _____

United States Marshal

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. 74-_____

United States District Court
FOR THE
WESTERN DISTRICT OF NEW YORK

JOSE GORDOVA and AMELIA
CORDOVA, et al. Plaintiffs,

v.

JAMES REED, et al.

Defendants.

SUMMONS IN CIVIL ACTION

Returnable not later than 20 days
after service.

RENE H. REIXACH, ESQ.
Greater Up-State Law Project
Monroe Co. Legal Assistance Corp.
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend
of HECTOR TORRES, a minor, and
on behalf of all other persons
similarly situated,

Plaintiffs,

-against-

JAMES REED, as Commissioner of
the Department of Social Services
of the County of Monroe, and on
behalf of all other commissioners
of local departments of social
services in the State of New York,
and ABE LAVINE, as Commissioner
of the Department of Social Ser-
vices of the State of New York,

Defendants.

Civil No. 74-510

COMPLAINT

INTRODUCTION

1. The plaintiffs challenge the constitutionality of section 382 of the New York Social Services Law upon which the defendant Reed has relied in denying public assistance to them for the minor plaintiff because the adult plaintiffs accepted the minor plaintiff, their nephew, into their home in New York from his mother's home in Puerto Rico. The plaintiffs seek a temporary restraining order prohibiting the application of this statute by the defendant; the convening of a three-judge court and preliminary injunctive relief; permanent injunctive relief and declaratory relief; class action relief; and restitution of all benefits wrongfully withheld by the defendant under the challenged statute.

JURISDICTION

2. Jurisdiction of this action is vested in this Court under 28 U.S.C. section 1343(3) which provides for the original

jurisdiction of a district court in any civil action authorized by law to be commenced by any person to redress the deprivation, under color of any State law, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

3. Jurisdiction of this action is also vested in this Court under 28 U.S.C. section 1343(4) which provides for the original jurisdiction of a district court in any civil action authorized by law to be commenced by any person to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

PARTIES

4. The plaintiffs JOSE CORDOVA and AMELIA CORDOVA are citizens of the United States who reside in Rochester, New York, within the Western District of New York. The plaintiff HECTOR TORRES is also a citizen of the United States who resides with them; he is seven years of age and is the nephew of the plaintiff AMELIA CORDOVA.

5. The defendant JAMES REED is the Commissioner of the Department of Social Services of the County of Monroe, State of New York, and resides in the Western District of New York. He is responsible for the general administration and supervision of that department pursuant to section 65 of the New York Social Services Law and acts under the supervision of and as agent of the defendant ABE LAVINE.

6. The defendant ABE LAVINE is the Commissioner of the Department of Social Services of the State of New York. He is

the chief administrator of that department and is responsible for exercising general supervision over the work of all local welfare authorities in New York pursuant to section 34 of the New York Social Services Law, including that of the defendant JAMES REED.

CLASS ACTION

7. This action is maintainable as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

8. The class represented by the plaintiffs includes all persons in the State of New York not otherwise liable for the care and maintenance of a child who is not a resident of the State of New York and who they bring into or receive or accept in New York from outside of the State.

9. That class is so numerous that joinder of all members is impracticable. There are questions of law common to the class, namely the constitutionality of section 382 of the New York Social Services Law. The claims of the plaintiffs are thus typical of the claims of the class and the relief sought by the plaintiffs will benefit the members of the class. The plaintiffs will fairly and adequately protect the interests of the class; they have no conflict of interest with the members of the class and are represented by counsel. The defendants, the parties opposing the class, and the members of the defendant's class hereinafter described, have acted (or refused to act) on grounds generally applicable to the class, in that they apply the provisions of section 382 of the New York Social Services Law to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

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10. The class represented by the defendant Reed includes all the local commissioners of social services departments in the State of New York. That class is so numerous, totalling on information and belief fifty-eight (58) commissioners, that joinder of all members is impracticable. There are questions of law common to the class, the same common questions alleged in paragraph 8 herein, and the defenses of the defendant are typical of the defenses of the class. The defendant Reed is a public official regularly represented by counsel and he will fairly and adequately protect the interests of the class; he has no conflict of interest with the members of the class. Final injunctive relief or corresponding declaratory relief with respect to the class as a whole is appropriate because the plaintiffs have acted on grounds generally applicable to the class by seeking relief against section 382 of the Social Services Law.

FACTS

11. During 1974 the minor plaintiff HECTOR TORRES came to Rochester, New York, from Puerto Rico to live with his aunt, the plaintiff AMELIA CORDOVA and her husband, the plaintiff JOSE CORDOVA. The child's mother remained in Puerto Rico.

12. In or about August, 1974, the plaintiff AMELIA CORDOVA applied for public assistance from the Department of Social Services of Monroe County on behalf of the plaintiff HECTOR TORRES.

13. On or about September 25, 1974, one L. Kyle, an employee of that Department, wrote on a "comment sheet" pertaining to the application of the plaintiffs,

"Hector just came from Puerto Rico in September and should be sent back to his mother. The case is being denied."

A copy of that document is annexed as Exhibit "A."

14. On or about September 25, 1974, the Department of Social Services of the County of Monroe sent the plaintiff AMELIA CORDOVA a "Notice of Decision" form denying her application for public assistance stating, in relevant part,

"Hector Torres' mother is legally responsible for him and you brought him from Puerto Rico with no plans for supporting him."

A copy of that notice is annexed as Exhibit "B."

15. Thereafter the plaintiffs requested a fair hearing on that denial and the Department of Social Services on its summary sheet therefor described the "facts, evidence and reasons" supporting the aforesaid denial of public assistance as follows:

Appellants' mother has sent him to live with her sister, Amelia Cordova. By accepting and receiving Hector Torres into their home the Codovas [sic] have accepted the responsibility for his care and maintenance."

The summary further described the "specific provisions of law" supporting that decision as "Social Welfare Law 382.1." A copy of that summary sheet is annexed as Exhibit "C."

16. Section 382.1 of the Social Services Law (formerly the Social Welfare Law) provides:

"Any person, institution, corporation or agency which shall bring, or cause to be brought, into the State of New York any child not having a state residence, or which shall receive or accept any child from outside of the State of New York, not having state residence, shall be responsible for the care and maintenance of such child whether placed out, boarded out or otherwise cared

for unless adopted by foster parents. Such responsibility shall continue during the minority of such child and thereafter until he is self-supporting.

17. After being notified of the scheduling of the said hearing the plaintiffs first consulted legal counsel. The plaintiffs seek an expeditious remedy to the deprivation of their constitutional rights by the defendants and do not want to waste their time in a futile proceeding in which their solely constitutional claims herein alleged cannot be adequately adjudicated. The aforesaid state proceeding cannot adjudicate such constitutional claims and would be futile and cause the plaintiffs undue delay and hardship, because under section 343(e) of the Social Services Law the defendant Lavine must enforce the provisions of that law, so that proceeding has been cancelled.

18. The plaintiffs have no adequate remedy at law and are suffering irreparable injury by virtue of the defendants' ongoing violation of their constitutional rights and continuing deprivation of public assistance benefits as alleged herein.

STATEMENT OF CLAIM

19. The plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 herein.

20. The plaintiffs rights to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States is violated under New York Social Services Law section 382 in that the plaintiffs are treated differently than persons in a family where a child comes from within New York State to live with adults who are not otherwise responsible for his care and maintenance, and such differing treatment of the

plaintiffs is arbitrary, capricious, discriminatory and without any rational basis related to legitimate goals and is not supported by any compelling state interest.

21. The constitutional right to travel of the plaintiff HECTOR TORRES, guaranteed by, among others, the privileges and immunities clauses of Article IV, section two of the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States, and the commerce clause and due process clause of the Fourteenth Amendment to the United States, is violated by the application of section 382 of the Social Services Law.

22. The defendants, acting under color of a statute of the State of New York, are subjecting and causing the plaintiffs to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution of the United States, in violation of 42 U.S.C. section 1983.

WHEREFORE, the plaintiffs demand judgment against the defendants:

1. Determining that this action is maintainable as a class action;
2. Preliminary and permanently enjoining and temporarily restraining the denial of public assistance based on section 382 of the Social Services Law;
3. Declaring section 382 of the Social Services Law to be unconstitutional;
4. Awarding restitution of benefits wrongfully withheld by the defendant Reed or his agents and employees;

5. Awarding the plaintiffs costs and disbursements and reasonable attorneys' fees;
6. Awarding such other and further relief as seems proper and just.

Dated: Rochester, New York
October 29, 1974

RENE H. REIXACH, ESQ.
Greater Up-State Law Project
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiffs

MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES
COMMENT SHEET
(CERTIFICATION PROJECT)

CASE NAME

Cordova, Amelia

CASE NUMBER

240449

PAGE NUMBER

1

DATE

COMMENTS

9/25/74

Ms. Cordova came in to apply as a
NDG for her nephew Hector Torres. She
stated that his mother, Nilda Hernandez,
is in Puerto Rico and is going to a
University there and cannot support him.
She also stated that he has been in Rochester
with her for 5 months. We sent 2 cables
to Puerto Rico, one on 8/8/74 and one
on 8/30/74. There has been no reply. I
called School # 11 and verified that
he is enrolled there. They said that
he was first enrolled 9/4/74, and was
not enrolled there last year. Based on
this information Hector just came from
Puerto Rico in September and should be
sent back to his mother. The case
is being denied.

L. Kyle

Exhibit A

MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES

111 WESTFALL ROAD

ROCHESTER, NEW YORK 14620

NOTICE OF DECISION CO-228

The preadded allowance includes food, FULL clothing, utilities, laundry, household furnishings and equipment, linens, appliances, repairs and replacements, personal incidentals, household supplies, children's school expenses and sales taxes. Your MEDICAID IDENTIFICATION CARD entitles you to medical care and services. Be sure to show your ID card to the person who will provide medical care or service.

240449
Case Number

9/25/74
Date

TO Ms. Amelia Cordova
52 Baldwin St.
Rochester, NY 14609

This is to inform you of our action in your case. The items checked below apply to you. Please read carefully.



BASIC ASSISTANCE APPLICATION



FOOD STAMP APPLICATION



MEDICAID APPLICATION



ACCEPTED: Your application has been accepted until

Your case has been recertified for assistance until



DENIED: Your application has been denied because

Hector Torres' mother is legally responsible for him and you brought him from Puerto Rico with no plans for supporting him. Furthermore you did not give complete and accurate information as



WITHDRAWN: Your application has been withdrawn at the request of

you stated that he has been in Rochester for 5 months (March) and per phone call to School # 11 he was not registered there until 9/74



On _____, you will receive a check in the amount of \$ _____ for the period _____



BASIC ASSISTANCE CASE



FOOD STAMPS



MEDICAID



Your case is being closed effective _____ because _____



On _____ Date _____ Medicaid coverage your check will be changed from _____

to _____ Reason: _____

If you believe that this action should not be taken, you may request a state fair hearing by telephoning 454-4272 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you need help in the fair hearing, contact one of the following community legal services: Legal Aid Society at 232-4090 or Monroe County Bar Legal Assistance Corporation at 325-3444 or 232-5400.

Exhibit B

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DEPARTMENT OF SOCIAL SERVICES

111 WESTFALL ROAD - ROCHESTER, NEW YORK 14620

TO: New York State Department of Social Services
Office of Counsel
Fair Hearing Section
Box 1740
Albany, New York 12201

Scheduled Hearing date: 10/16/74

Appellant: Jose Cordova

Attorney or
Representative,
if any

FAIR HEARING SUMMARY

Case Name, category, and case number: Jose Cordova for Hector Torres ADC 240449
Address of Appellant: 52 Baldwin Street
Rochester, N.Y. 14609

Names, ages and relationship of persons affected:

Torres, Hector 2/1/67 self

Action which prompted request for Fair Hearing:

PA denial

Brief description of facts, evidence and reasons supporting above action: (include identification of specific provisions of law, Board Rules, Department Regulations and approved local policies which support decision):

Appellant's mother has sent him to live with her sister, Amelia Cordova. By accepting and receiving Hector Torres into their home the Codovas have accepted the responsibility for his care and maintenance.

Social Welfare Law 382.1

Relevant Budget or Budgets:

Special Grants:

Needs and Income	Date	Date	Period Covered - Item	Amount
------------------	------	------	-----------------------	--------

Submitted by

Case Worker

Date:

10/11/74

Copy to:

() Appellant

() Representative

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA
individually and as next friend
of HECTOR TORRES, a minor,
and on behalf of all other per-
sons similarly situated,

Plaintiffs,

-against-

JAMES REED, as Commissioner of the
Department of Social Services of
the County of Monroe, and on behalf
of all other commissioners of local
departments of social services in
the State of New York, and ABE
LAVINE, as Commissioner of the Depart-
ment of Social Services of the State
of New York,

Defendants.

Civil no. 74-510

NOTICE OF MOTION

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of
Amelia Cordova and the complaint herein, the plaintiffs will move
this Court at the Federal Building, 100 State Street, Rochester,
New York, at 10:00 o'clock in the forenoon on the 11th day of
November, 1974, or as soon thereafter as counsel can be heard, for
a preliminary injunction and temporary restraining order enjoining
the defendants from applying the provisions of section 382 of the
New York Social Services Law on the ground that said statute is
unconstitutional and violates 42 U.S.C. section 1983 as alleged in
the complaint, for the convening of a three-judge district court
to hear the case as applied for herewith and for such other and
further relief as seems proper and just.

Dated: Rochester, New York
October 30, 1974

Yours, etc.

RENE H. REIXACH, ESQ.
Greater Up-State Law Project
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiffs

TO: James Reed
111 Westfall Road
Rochester, New York

Abe Lavine
1450 Western Avenue
Albany, New York

Defendants

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend of
HECTOR TORRES, a minor, and on
behalf of all other persons simi-
larly situated,

Plaintiffs,

-against-

JAMES REED, as Commissioner of the
Department of Social Services of
the County of Monroe, and on behalf
of all other commissioners of local
departments of social services in
the State of New York, and ABE
LAVINE, as Commissioner of the
Department of Social Services of
the State of New York,

Defendants.

Civil no. 74-510

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

AMELIA CORDOVA, being duly sworn, deposes and says:

1. I am one of the plaintiffs herein and I make this
affidavit in support of the plaintiffs' motion for a preliminary
injunction and temporary restraining order. I have read the
complaint herein and the same is true to my own knowledge, except
where stated on information and belief, in which case I believe
it to be true.

2. As the complaint makes clear, we have a seven-year
old relative now living with us. Additionally we have three
children of our own living with us.

3. If the public assistance for which we had applied
had been granted for Hector Torres, we would have been entitled,
on information and belief, to receive \$94.00 per month for his
basic needs, plus one-sixth of our shelter and fuel costs. Since

my husband has a take home pay of about \$120.00 per week, or \$520 per month, our entire family is being deprived of public assistance amounting to about 20% of our available income. We are also in effect being required to reduce our standard of living to the public assistance level by virtue of Hector's being in our home and the denial of assistance for him. We have no savings and thus cannot rely on any reserve to support Hector during the pendency of this case.

WHEREFORE, I pray that a preliminary injunction issue preventing reliance on section 382 of the Social Services Law pending final determination of this case and that a temporary restraining order issue pending hearing before a three-judge court.

Amelia Cordova
AMELIA CORDOVA

Sworn to before me this

29th day of October, 1974.

Rene H. Reixach, Jr.

RENE H. REIXACH, JR.
NOTARY PUBLIC, State of New York
No. 8542715
Qualified in Monroe County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend of
HECTOR TORRES, a minor, and on
behalf of all other persons
similarly situated,

Plaintiffs,

-against-

JAMES REED, as Commissioner of the
Department of Social Services of the
County of Monroe, and on behalf of
all other commissioners of local
departments of social services in
the State of New York, and ABE
LAVIN, as Commissioner of the
Department of Social Services of
the State of New York,

Defendants.

Civil no. 74-510

APPLICATION FOR
THREE-JUDGE COURT

Plaintiffs, upon the complaint herein, hereby make
application for hearing of this cause and of the plaintiffs' motion
for an interlocutory injunction herein before a three-judge dis-
trict court as required by 28 U.S.C. section 2281, and request
that the Chief Judge of the United States Court of Appeals for
the Second Circuit be notified pursuant to 28 U.S.C. section 2284
of presentation of the plaintiffs' application for an injunction
in order that necessary designation of judges for said court may
be made.

Dated: October 30, 1974

Yours, etc.

RENE H. REIXACH, ESQ.
Greater Up-State Law Project
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA, :
individually and as next friend of :
HECTOR TORRES, a minor, and on :
behalf of all other persons similarly :
situated, :

Plaintiffs, :

-against- :

Civil No. 74-510

JAMES REED, as Commissioner of the :
Department of Social Services of the :
County of Monroe, and on behalf of :
all other commissioners of local :
departments of social services in :
the State of New York, and ABE :
LAVINE, as Commissioner of the :
Department of Social Services of :
the State of New York, :

AFFIDAVIT IN OPPOSITION

Defendants. :

CITY OF ROCHESTER
COUNTY OF MONROE
STATE OF NEW YORK

Frank P. Celona being duly sworn deposes and says:

That I am a Social Service Counsel on the Legal Staff of Monroe County
Department of Social Services and am one of the attorneys authorized to
represent defendant James Reed in this action.

That this affidavit is made in opposition to the relief requested by the
plaintiffs in their notice of motion dated 10/30/74.

(A) The Plaintiffs are not being denied due process of law.

(1) An applicant who feels aggrieved by agency action has a right to
a State Fair Hearing.

N.Y. Social Service Law section 156
18 N.Y.C.R.R. section 358.4

(2) The State Hearing decision is also subject to Judicial Review by the New York State Courts in Article 78 Proceedings.

18 N.Y.C.R.R. Section 358.18(c)
N.Y.C.P.L.R. Section 7803

(B) The Plaintiffs requested a State Fair Hearing which was scheduled for 10/16/74.

The Plaintiffs cancelled that state administrative review because they "do not want to waste time....." (paragraph #17 of the complaint).

(C) The Plaintiffs have failed to exhaust their administrative remedies in the State Courts.

(D) The Plaintiffs do have adequate remedy at law because there is the right to judicial review by State Courts, and therefore, their constitutional rights are protected.

(F) The complaint fails to state a cause of action in this court because of the remedies available to them as above outlined.

(F) New York Social Welfare Law Section 392.1 is a section establishing liability to support. It in no way restricts the right to travel. Even the U. S. Immigration laws require affidavits of support from U.S. residents on behalf of immigrants so as to insure that said immigrants do not become public charges.

(G) Plaintiffs have made no showing of irreparable harm nor have they made any showing of probability of success in the action.

(1) Plaintiffs financial harm, if any, is a self created hardship. They know they had limited income prior to acceptance of the child. They cannot now claim the statute is causing them irreparable harm.

(2) The plaintiffs can immediately terminate their financial problem, if any, by returning the child to its mother in Puerto Rico.

(3) Even proof of a discriminatory intent does not by itself render an action violative of equal protection.

(PALMER v. THOMPSON, 403 U.S. 217)

In order for plaintiffs here to be successful they must show invidious discrimination against them in violation of the equal protection clause.

(4) It has been repeatedly held by recent Supreme Court decisions that there is no constitutional right to social welfare and that 'strict' scrutiny does not apply to welfare legislation.

(JEFFERSON v. HACKNEY, 406 U.S. 535)

(5) In order to get a preliminary injunction the plaintiff must show irreparable harm will accrue unless his motion is granted, and the courts have held that a party seeking a preliminary injunction have a heavy burden of proof. The United States Court of Appeals (Second Circuit) have set forth an explanation of the plaintiffs burden as follows:

..."We repeatedly have emphasized the heavy burden on a party seeking the extraordinary remedy of preliminary injunctive relief. The standard that has evolved is that the moving party 'assume(s) the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that (it has) raised serious questions going to the merits and that the balance of hardships (tips) sharply in (its) favor.' Stark v. New York Stock Exchange, 466 F.2d 743, 744 (2 Cir. 1972) (emphasis added); Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2 Cir.), cert. denied, 394 U.S. 999 (, 89 S.Ct. 1595, 22 L.Ed.2d 777) (1969).

(PRIDE v. COMMUNITY SCHOOL BOARD OF BROOKLYN, 438 F.2d 321)

(H) The plaintiffs are not entitled to have this case treated as a class action.

(1) They fail to show that they represent persons who are being denied or will be denied benefits because of N.Y. Social Service Law 382.1. Each year, thousands of non-residents come into New York State. There is no showing that they are being aggrieved by Social Service Law 382.1.

(2) Plaintiffs lack standing, not only personally, but also lack standing to represent any other plaintiff, persons similarly situated to them, or any other class of plaintiffs.

(I) Under the rule in *Eisen vs. Carlisle & Jaquelin*, 42 U.S.L.W. 4804, the plaintiffs must give notice to all individuals who may be affected by this action. The Plaintiffs have failed to do this.

(J) The court cannot issue a temporary restraining order unless the court should decide to convene a three-judge court.

The plaintiffs fail to establish that they are entitled to either of these forms of relief.

(K) The court lacks jurisdiction in this case:

(1) Over the subject matter of this action because New York State law provides adequate administrative and judicial remedies for the matters outlined herein; and

(2) Over Monroe County Department of Social Services because said department is established and operated pursuant to New York State Law and Regulations pertaining thereto; and

(3) To grant money judgment or damages against defendant Monroe County Department of Social Services

(L) If this temporary restraining order is granted enjoining defendants from applying the provisions of Social Service Law section 382.1, defendant Reed will suffer financial loss and will not have the benefit of administrative and judicial review of its action.

WHEREFORE, defendant James Reed, respectfully prays for an order of this court denying the relief requested by plaintiffs in their Notice of Motion dated 10/30/74 in all respects, dismissing the plaintiffs complaint, and that Defendant James Reed have such other or further relief as to the court seems just and proper.

Frank P. Celona

FRANK P. CELONA

Sworn to before me this

8

day of November, 1974

Salvatore DiLullo

Notary Public

Com. expires 3/31/75

- 2 -

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA, individually :
and as next friend of HECTOR TORRES, a minor, :
and on behalf of all other persons similarly :
situated, :

Plaintiffs, :

-against-

JAMES REED, as Commissioner of the Department :
of Social Services of the County of Monroe, :
and on behalf of all other commissioners of :
local departments of social services in the :
State of New York, and ABE LAVINE, as Commis- :
sioner of the Department of Social Services :
of the State of New York, :

Defendants. :

Civil
74-510
NOTICE OF
MOTION
TO
DISMISS

TO: Rene H. Reixach, Esq.
Attorney for Plaintiffs
80 West Main Street
Rochester, New York 14614

PLEASE TAKE NOTICE that the undersigned will bring
on the annexed Motion for hearing before this Court at the
United States District Court House, 100 State Street, Rochester,
New York, on the 11th day of November, 1974, at ten o'clock in
the forenoon of that day or as soon thereafter as counsel can
be heard. Dated: November 9, 1974.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

BY:

Paul O. Harrison
PAUL O. HARRISON
Assistant Attorney General
of counsel
Office and Post Office Address
300 Terminal Building
65 Broad Street
Rochester, New York 14614
Telephone: 716-- 454-4540

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA, individually
and as next friend of HECTOR TORRES, a minor,
and on behalf of all other persons similarly
situated,

Civil
74-510

Plaintiffs,

-against-

JAMES REED, as Commissioner of the Department
of Social Services of the County of Monroe,
and on behalf of all other commissioners of
local departments of social services in the
State of New York, and ABE LAVINE, as Commis-
sioner of the Department of Social Services
of the State of New York,

Defendants.

MOTION
TO
DISMISS

The Defendant, Abe Lavine, as Commissioner of the
Department of Social Services of the State of New York, by his
attorney, Louis J. Lefkowitz, Attorney General of the State of
New York, moves the Court as follows:

1. To dismiss the action on the ground that the
court lacks jurisdiction over the subject matter.
2. To dismiss the action on the ground that the
complaint fails to state a claim upon which relief can be
granted.
3. To deny class-action relief.

Dated: November 9, 1974

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

BY:

Paul O. Harrison

PAUL O. HARRISON
Assistant Attorney General
of counsel

Office and Post Office Address
300 Terminal Building
65 Broad Street
Rochester, New York 14614
Telephone: 716 - 454-4540

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA, et al.,

Plaintiffs,

Civil No. 74-510

-against-

AFFIDAVIT

JAMES REED, et al.,

Defendants.

STATE OF NEW YORK) ss.:
COUNTY OF MONROE)

RENE H. REIXACH, being duly sworn, deposes and says:

1. That he is a member of the Bar of this Court and attorney for the plaintiffs herein; that he makes this affidavit in opposition to the motion by the defendant Abe Lavine to dismiss and to deny class relief.

2. On the return date of the plaintiffs' motion for preliminary injunctive relief, a three-judge court, and a temporary restraining order, November 11, 1974, I was first served at about 10:15 a.m. in the courtroom with a Notice of Motion and Motion to Dismiss by the defendant Abe Lavine, dated November 9, 1974; a copy is annexed. The motion purported to be

returnable on November 11, 1974, the morning it was served.

3. The other named defendant, James Reed, has neither moved to dismiss nor answered and is now in default since more than twenty days has passed since he was served on October 30, 1974.

4. That the motion by the defendant Lavine is improper because it was not timely served at least five (5) days before the return date as required by Rule 6(d) of the Federal Rules of Civil Procedure and that there has not been any order permitting service of such motion on less than five (5) days'

notice, which in any event could only be made had the defendant shown that his "failure to act was the result of excusable neglect" pursuant to Rule 6(b)(2) of the Federal Rules of Civil Procedure. Suffice it to say that the defendant Abe Lavine has shown no such excusable neglect; and, of course, the defendant James Reed has not even moved for any relief.

5. That further the motion by the defendant Abe Lavine is defective insofar as there is no factual showing made by affidavit in support thereof.

6. That plaintiffs will promptly move for class action certification in this action, at which time all of the factual showings required by Rule 23 of the Federal Rules of Civil Procedure will be presented. That the affidavit of Frank P. Celona, dated November 8, 1974, which was also not timely served since I was also served with it in Court on the morning of November 11, 1974, states only two grounds for denying class relief, set forth in sections (H)(1) and (H)(2) thereof.

7. That since the plaintiffs have not yet made their class action motion the pleading of numerosity in paragraph 9 of the complaint is sufficient, particularly in view of the default by the defendant Reed which by virtue of Rule 8(d) of the Federal Rules of Civil Procedure requires that the plaintiffs' averment of numerosity be deemed admitted. That further the affidavit of Frank P. Celona itself demonstrates the existence of numerosity in the very paragraph (H)(1) where the issue is raised in that the affidavit states "Each year, thousands of non-residents come into New York State."

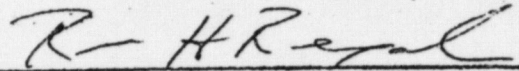
8. That the assertion of a lack of standing in paragraph (H) (2) of Mr. Celona's affidavit is wholly conclusory and is an issue of law. There has been no factual showing of any lack of standing of the plaintiffs and there cannot be since the complaint and affidavit of the plaintiff Amelia Cordova demonstrate that they are aggrieved by the application of section 382 of the Social Services Law.

9. That the conclusion of law in paragraph (I) of Mr. Celona's affidavit is erroneous in that the case referred to therein expressly is limited to class actions brought pursuant to Rule 23(b) (3) of the Federal Rules of Civil Procedure while this action is expressly brought under Rule 23(b) (2) of the Federal Rules of Civil Procedure, as stated in paragraph 7 of the complaint. Inasmuch as the defendants have not even answered yet it is premature, to say the least, to assert that notice should already have been given to class members, if such notice be required at all.

10. That all of the issues raised by the defendants, in addition to the objections heretofore stated, are beyond the jurisdiction of a single judge and must be reserved for decision by the three-judge court.

WHEREFORE, deponent prays that the motion by the defendant Abe Lavine be denied and that the relief requested by the plaintiffs in their motion be granted to the extent of

requesting the convening of a three-judge court to further determine this action and granting a temporary restraining order.


RENE H. REIXACH

Sworn to before me this
25th day of November, 1974.

K. WADE EATON
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA :
individually and as next friend :
of HECTOR TORRES, a minor, :
and on behalf of all other persons :
similarly situated, :

Plaintiffs, :

-against- :

JAMES REED, as Commissioner of the :
Department of Social Services of :
the County of Monroe, and on behalf :
of all other commissioners of local :
departments of social services in :
the State of New York, and ABE :
LAVINE, as Commissioner of the :
Department of Social Services of the :
State of New York, :

Defendants. :

Civil No. 74-510

ANSWER ON BEHALF OF
JAMES REED

Defendant James Reed as Commissioner of the Department of Social
Services of the County of Monroe for his answer to the complaint herein
alleges as follows:

FIRST: Denies each and every allegation contained in paragraph
numbered "1" (Introduction) of the complaint.

SECOND: Denies each and every allegation contained in paragraphs
numbered "2" and "3" (Jurisdiction) of the complaint.

THIRD: Admits the allegations contained in paragraphs numbered "4"
"5", "6" (Parties) of the complaint.

FOURTH: Denies each and every allegation contained in paragraphs numbered "7", "8", "9", "10" (Class Action) of the complaint.

FIFTH: Admits the allegations contained in paragraphs numbered "11", "12", "13", "14", "15", "16" (Facts) of the complaint.

SIXTH: Denies allegation contained in Paragraph #17 (Facts) of the complaint except Respondent Reed admits that the petitioner cancelled a scheduled state Fair Hearing.

SEVENTH: Denies the allegations contained in Paragraph #18 (Facts) of the complaint.

EIGHTH: Denies each and every allegation contained in paragraphs numbered "19", "20", "21", "22" (Statement of Claim) of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

NINTH: The plaintiffs have failed to exhaust administrative remedies.

N. Y. Social Service Law Section 166 provides for an administrative appeal to the State Department of Social Services from the action or failure to act of a local social service official, and for a fair hearing.

The plaintiffs intentionally cancelled said hearing.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

TENTH: The Plaintiffs are not being denied due Process of Law.

They have a right to administrative hearing and judicial review thereof.

(ARTICLE 78 Proceeding in New York State Courts).

They have the remedy of Declaratory Judgment in New York State Courts.

(CPLR Section 3001).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

ELEVENTH: New York Social Service Law Section 382.1 is a support statute, not a residency statute, and as applied to plaintiffs is valid and constitutional.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

TWELFTH: The Plaintiffs lack standing to maintain this action and lack capacity to sue.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

THIRTEENTH: The complaint fails to state a claim upon which relief can be granted.

The plaintiffs fail to show any basis for equitable relief.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

FOURTEENTH: The Court lacks jurisdiction of the subject matter.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

FIFTEENTH: The Court lacks jurisdiction to grant a judgment or order for money damages, as requested in the complaint, against defendant Reed.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE RESPONDENT REED ALLEGES:

SIXTEENTH: That Defendant James Reed is local Commissioner of Social Services for the County of Monroe only, and as such, he is not qualified or authorized by law to represent or act on behalf of all the other local commissioners of social service departments in New York State.

The Plaintiffs, upon information and belief, have failed to give notice to all other local commissioners in New York State.

WHEREFORE, James Reed as Commissioner of the Department of Social Services of the County of Monroe respectfully prays that this court:

- (1) Deny the injunctive, declaratory, and each and every other type of relief sought in the complaint by the plaintiffs; and
- (2) Dismiss the complaint in toto, or at least dismiss the complaint as against James Reed as local Commissioner of the Monroe County Department of Social Services; and
- (3) Declare that New York State Social Service Law Section 382.1 as applied to plaintiffs is valid and constitutional; and
- (4) Grant to Defendant James Reed, such other and further relief as to the court seems just and proper together with costs and disbursements in this action.

Rochester, New York

Dated: December 3, 1974

James Reed

James Reed as Commissioner of
Department of Social Services of the
County of Monroe

CITY OF ROCHESTER
COUNTY OF MONROE
STATE OF NEW YORK

James Reed, being duly sworn, deposes and says that he is the Commissioner of Monroe County Department of Social Services; that he is one of the Defendants in this action; that he has read the foregoing answer; that the same is true to his own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes to be true.

James Reed

James Reed

Sworn to before me

this 3 day of December, 1974

Frank P. Celona

Notary Public

Lawrence F. Tranello, Chief Counsel
Frank P. Celona, of Counsel
Attorneys for James Reed as
Commissioner of Monroe County
Department of Social Services
111 Westfall Road
Rochester, New York 14620
Telephone: 716 - 442-4000, Ext. 2276

To:

Rene H. Reixach
Greater Up-State Law Project
Monroe County Legal Assistance Corporation
80 W. Main Street
Rochester, New York 14614
Tel: 716 - 454-6500
Attorney for Plaintiffs

Louis J. Lefkowitz
Attorney General of New York
Attorney for Defendant Lavine
Paul O. Harrison
Assistant Attorney General of Counsel
300 Terminal Building
Rochester, New York 14614
Tel: 716 - 454-4540

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA, et al.,

Plaintiffs,

-vs-

JAMES REED, et al.,

Defendants.

Civil No. 74-510

AFFIDAVIT

STATE OF NEW YORK) SS:
COUNTY OF MONROE.)

AMELIA CORDOVA, being duly sworn, deposes and
says:

1. I am one of the plaintiffs herein and I make
this affidavit in support of our renewal of our motion for
immediate relief.

2. Hector Torres, the minor plaintiff, is ill and
in need of medical assistance; he has been unable to attend
school this week. Hector has had to go to the hospital twice
and to the doctor once since November 1, for fever, cough and
vomiting and he has had to have a prescription refilled several
times for this. We have been informed that he should see a
specialist but cannot afford it. He also was sent home from
school because of an eye infection but we were unable to afford
an eye doctor. We have not been able to pay the hospital bills
because of medical expenses incurred for our own children. We
need immediate relief in the form of a medicaid card so Hector
can receive proper medical care; and we also need a public assis-
tance grant to meet Hector's needs now that winter is here and

snow storms are upon us.

WHEREFORE, deponent prays that the Court afford the plaintiffs immediate relief herein.

Amelia Cordova
AMELIA CORDOVA

Sworn to before me this

4th day of December, 1974.

R. H. Reixach

RENE H. REIXACH, JR.
NOTARY PUBLIC, State of New York
No. 8542715
Jaffed Monroe County
March 30, 1976

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend of HECTOR
TORRES, a minor, and on behalf of all
other persons similarly situated,

Plaintiffs

- vs -

CIVIL 74-510

JAMES REED, as Commissioner of the
Department of Social Services of the
County of Monroe, and on behalf of all
other commissioners of local departments
of social services in the State of New York,
and ABE LAVINE, as Commissioner of the
Department of Social Services of the
State of New York,

Defendants

Rene H. Reixach
80 West Main Street
Rochester, N.Y. 14614
Attorney for plaintiffs

Frank P. Celona
111 Westfall Road
Rochester, N.Y. 14620
Attorney for defendant Reed

Paul O. Harrison
Assistant Attorney General of New York
300 Terminal Building
Rochester, N.Y. 14614
Attorney for defendant Lavine

The complaint seeking preliminary and injunctive
relief, a judgment declaring Section 382 of the New York
Social Services Law unconstitutional, and the convening of

a three judge court was filed October 30, 1974. The plaintiff moved for a temporary restraining order. That motion was argued November 12, 1974 and was submitted November 25, 1974.

The defendant Lavine, by notice of motion filed November 11, 1974 moved to dismiss the complaint. That motion was also argued and submitted on November 25, 1974.

While these motions were pending the plaintiff moved for a default judgment against the defendant Reed.

That motion is in all respects denied.

Hector Torres is a seven year old child whose home is in Puerto Rico. In 1974 he was brought to Rochester from Puerto Rico by the plaintiff Amelia Cordova, his aunt, to live with her and her husband, the plaintiff Jose Cordova. The child's mother remained in Puerto Rico. In September of 1974 the plaintiff, Amelia Cordova, applied for public assistance to the Department of Social Services of Monroe County on behalf of Hector Torres. On September 25, 1974 an employee of that department wrote on a comment sheet pertaining to the application "Hector just came from Puerto Rico in September and should be sent back to his mother. The case is being denied." On September 25, 1974 the Department of Social Services sent the plaintiff, Amelia Cordova, a "Notice of Decision" form denying the application

which read in part as follows: "Hector Torres' mother is legally responsible for him and you brought him from Puerto Rico with no plans for supporting him".

Thereafter the plaintiffs requested a fair hearing on that denial. The Department of Social Services on its summary sheet described the "facts, evidence and reasons" supporting the aforesaid denial of public assistance as follows: "Appellant's mother has sent him to live with her sister Amelia Cordova. By accepting and receiving Hector Torres into their home the Cordovas have accepted the responsibility for his care and maintenance."

The summary sheet described the "specific provisions of law" supporting that decision as "Social Welfare Law 382.1".

A hearing was scheduled for October 16, 1974. Before it could be held plaintiffs intentionally cancelled their request for a hearing, and brought this action.

The statute under attack is a support statute and fixes responsibility for the support of a minor out of state child.

The plaintiffs have an adequate remedy at law in the New York State courts. They may not ignore state

administrative remedies and bring this action. Eisen
vs. Eastman, 421 F.2d. 560, 569 (2 cir. 1969).

I decline to take the necessary steps for the
convening of a three judge court.

The action is dismissed.

IT IS HEREBY SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

March 5, 1975.

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 74-510

JOSE CORDOVA and AMELIA CORDOVA, Individually
and as next friend of HECTOR TORRES, a minor and
on behalf of all other persons similarly situated

vs.

JAMES REED, as Commissioner of the Department of
Social Services of the County of Monroe, and on
behalf of all other commissioners of local departments
of social services in the State of New York

JUDGMENT

This action came on for ~~XXX~~ (hearing) before the Court, Honorable Harold P. Burke
, United States District Judge, presiding, and the issues having been duly ~~XXX~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing, that the
action be dismissed.

Dated at Buffalo, New York
of March , 1975 .

, this 6th day

JOHN K. ADAMS

JOHN K. ADAMS

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE CORDOVA and AMELIA CORDOVA,
individually and as next friend of
HECTOR TORRES, a minor, and on behalf
of all other persons similarly situated,

Plaintiffs,

-vs-

JAMES REED, as Commissioner of the
Department of Social Services of the
County of Monroe, and on behalf of all
other commissioners of local departments
of social services in the State of New
York, and ABE LAVINE, as Commissioner of
the Department of Social Services of the
State of New York,

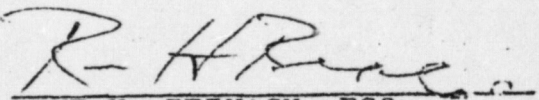
Defendants.

Civil No. 74-510

NOTICE OF APPEAL

Notice is hereby given that JOSE CORDOVA, AMELIA
CORDOVA and HECTOR TORRES, plaintiffs above named, hereby appeal
to the United States Court of Appeals for the Second Circuit from
the Order of the Honorable Harold P. Burke, dated March 5, 1975,
dismissing this action and entered in this action on the 5th day
of March, 1975, and the judgment entered on March 6, 1975.

March 6, 1975

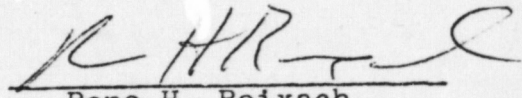

RENE H. REIXACH, ESQ.
Greater Up-State Law Project
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 1975,
I served the foregoing appendix upon counsel for the
appellees, by causing copies to be mailed, postage
prepaid, to:

Frank P. Celona, Esq.
Department of Social Services
111 Westfall Road
Rochester, New York 14620

David L. Birch, Esq.
Deputy Assistant Attorney General
Two World Trade Center
New York, New York 10047


Rene H. Reixach